

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2009-003

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, CREATING AN AMNESTY PROGRAM FOR THE TOWN, AND AUTHORIZING THE TOWN COUNCIL TO REVIEW CERTAIN USES THAT WERE IN OPERATION UPON THE DATE OF INCORPORATION THAT DO NOT COMPLY WITH THE PROVISIONS OF TOWN'S UNIFORM LAND DEVELOPMENT CODE, UPON APPLICATION OF THE PROPERTY OWNER; TO GRANT THE TOWN COUNCIL AUTHORITY TO GRANT AMNESTY FROM PROVISIONS OF THE UNIFORM LAND DEVELOPMENT CODE; PROVIDING CRITERIA FOR THE TOWN COUNCIL TO GRANT AMNESTY FROM THE LAND DEVELOPMENT CODE IN ORDER TO PROVIDE AMNESTY FROM THE PROVISIONS OF THE UNIFORM LAND DEVELOPMENT CODE WITHIN THE TOWN; PROVIDING A TIME PERIOD FOR A PROPERTY OWNER TO SUBMIT AN APPLICATION FOR AMNESTY; PROVIDING FOR ABATEMENT OF ENFORCEMENT FOR A TWO YEAR PERIOD; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at the direction of the Town Council, the Town administrative staff has undertaken a comprehensive review of uses currently operating on properties within the Town; and,

WHEREAS, as part of the Town Administration's review of such uses, it has become apparent that through an apparent lack of enforcement or monitoring by Palm Beach County, that certain uses that are currently operating within the Town may have been operating on the property prior to incorporation; and

WHEREAS, several property owners have uses on their properties which are not in compliance with the Palm Beach County Comprehensive Plan and the Uniform Land Development Code; and,

WHEREAS, the Town Council recognizes that property owners, who own property within the Town, have relied on certain action or the inaction by Palm Beach County prior to incorporation, and that as a result, the property owner may have expended funds to develop the incompatible use on the property; and

WHEREAS, in a manner consistent with the Town's proposed comprehensive plan, the Town Council finds that it would be appropriate to create an amnesty program in which the Town Council would provide a process whereby property owners could petition the Town Council to allow the use that was operating prior to incorporation to continue on the property, subject to conditions imposed by the Town Council; and,

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WHEREAS, the causes for operation of the uses may include improper approvals by the County in issuing business tax receipts, formerly known as occupational licenses, improper issuance of building permits, and improper issuance of zoning information, which resulted in the operation of uses that are incompatible with the Palm Beach County Comprehensive Plan and Uniform Land Development Code; and,

WHEREAS, the Town Council recognizes the potential hardship in requiring strict compliance with the Uniform Land Development Code in certain cases, and that certain equities may weigh in favor of providing discretion for a limited time to the Town Council, on a case-by-case basis, to permit certain uses to remain so long as they are not contrary to the public interest; and,

WHEREAS, the temporary, discretionary authority provided herein to the Town Council is consistent with the other duties and responsibilities of the Town Council, as provided in the Town Charter, and is in the best interest of the health, safety, and welfare of the citizens and residents of the Town of Loxahatchee Groves.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, AS FOLLOWS:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Property owners that have commenced operation of a use prior to the November 1, 2006, the Town’s date of incorporation, and who seek amnesty under this ordinance, shall submit an application to the Town Clerk, along with an application fee of \$_____ per property control number. The written request shall be contained on an application form provided by the Town Clerk, and shall require the submittal of documentation to support the request for amnesty, including a copy of a business tax receipt issued prior to the date of incorporation, utility bills, and property tax receipts demonstrating that the use has been in operation prior to the date of incorporation, November 1, 2006, and continuously since that time. The property owner will also be required to pay the Town’s costs associated with the review of any application prior to such time as the Town Council considers the request.

Section 3. The application for amnesty under this ordinance as well as all supporting documentation shall be submitted to the Town Clerk prior to the expiration date of this ordinance. Once received by the Town Clerk, the application shall be forwarded to the Town Planner for review. The Town Planner shall make a recommendation to the Town Council as to whether to grant amnesty pursuant to this ordinance. A recommendation to grant amnesty shall be made only if all of the criteria listed hereunder are met:

- a. the use must have been in operation prior to the Town’s date of

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incorporation, November 1, 2006, and in continuous operation since that time; and,

b. prior to the Town's date of incorporation, November 1, 2006, Palm Beach County must have issued an occupational license or business tax receipt for the business and use currently operating on the property; and,

c. the property owner must not owe any ad valorem taxes or other fees to the Town, including any fees required to be paid pursuant to this ordinance; and

d. the use is currently not permitted under the applicable zoning district designation; and,

e. granting the amnesty would not be inconsistent with the health, safety, and welfare of the residents and citizens of Loxahatchee Groves, and will not be contrary to the public interest or the general purposes sought to be accomplished by the applicable provisions of the Uniform Land Development Code regulations; and,

f. if necessary, appropriate conditions may be imposed to reduce any adverse impacts to properties located in the vicinity of the use.

Section 4. Upon receipt of the recommendation of the Town Planner, the Town Clerk shall notify the property owner of the date and time that the Town Council will consider the recommendation of the Town Planner. The Town Council's consideration of the Town Planner's recommendation shall take place at a duly noticed public hearing. Notice of the public hearing shall be posted at Town Hall, and shall be provided by first class mail to all property owners who own property within one thousand five hundred feet (1500') of each property line of the property on which the use is currently operating. The property owner shall be responsible for providing notice to the neighboring property owners and providing an affidavit of notice to the Town Clerk prior to the public hearing. The public hearing shall be considered a quasi-judicial hearing, and shall be held in conformance with the Town's quasi-judicial hearing requirements. At the public hearing, the Town Council may approve the recommendation, with conditions, or reject the recommendation. Any recommendation to grant amnesty may be subject to any conditions the Town Council determines to be reasonable.

Section 5. Upon the granting of amnesty by the Town Council, the Town Council's decision to grant amnesty, subject to any conditions, shall be reduced to writing in the form of an order, and the Town Clerk shall record the order in the Public Records of Palm Beach County. The costs of recording shall be the responsibility of the property owner. Any order entered pursuant to this ordinance shall only continue to be in effect for no more than a period of twenty (20) years from the date of the Order, until such time as the use ceases to operate, or until such time as the property owner who submitted the application conveys, sells, or otherwise transfers the property on which the use is operating, or sells, conveys, or otherwise transfers the ownership of the business,

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whichever is earlier. For purposes of this ordinance a sale, conveyance, or transfer shall occur upon the death of the property owner, or a sale, conveyance, or transfer of a majority of the shares of stock in the business. Once the amnesty period terminates, the Town shall record an order to release the Town Council's order approving the use.

Section 6. A property owner shall have sixty (60) calendar days following receipt of written notice from the Town as to the availability of the amnesty program (expiration date) to submit an application for amnesty pursuant to this ordinance (expiration date). No application shall be accepted or reviewed subsequent to the expiration date.

Section 7. This ordinance does not provide any property owner any vested right, with respect to any uses currently operating on their property. Property owners shall have two (2) years from the effective date of this ordinance to bring the property, including any use operating on the property, into compliance with the Town's Uniform Land Development Code and Code of Ordinances. In the event the property or any use operating on the property is not in compliance with the Town's Uniform Land Development Code or Code of Ordinances, or other applicable law after two (2) years from the effective date of this ordinance, the Town shall be entitled to commence any legal action, whether through the code enforcement process, or through filing an appropriate legal action with the appropriate court in Palm Beach County to obtain compliance with the applicable state or local law, code, or regulation.

Section 8. Failure of the Town to insist upon compliance with any term or provision contained in this ordinance, or any other applicable statute, regulation, code, or law shall not constitute a waiver thereof, and no waiver of any term or provision of this ordinance, or other applicable statute, regulation, code, or law shall be effective unless it is approved by the Town Council and reduced to writing and signed by the property owner and the Town. Any waiver of any term or provision of this ordinance, or any applicable statute, regulation, code, or law shall only be applicable to the specific term or provision and instance to which it is related, and shall not be deemed to be a continuing or future waiver as to such term or provision or as to any other term or provision.

Section 9. Severability. Should any section, provision, paragraph, sentence, clause of word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall not affect the validity of the remaining portions or applications of this Ordinance.

Section 10. Codification. It is the intention of the Town Council of the Town of Loxahatchee Groves, that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other word or phrase in order to accomplish such intention.

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Section 11. Conflicts. That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 12. Effective Date. This Ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS ____ DAY OF _____, 2009.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS ____ DAY OF _____, 2009.

TOWN OF LOXAHATCHEE
GROVES, FLORIDA

ATTEST:

Mayor David Browning

TOWN CLERK

Vice-Mayor Dennis Lipp

APPROVED AS TO LEGAL FORM:

Council Member

Office of the Town Attorney

Council Member

Council Member

SSG:DNT:dnt

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